CLERK'S OFFICE U.S. DIST. COURT AT CHARLOTTESVILLE, VA FILED

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA CHARLOTTESVILLE DIVISION

JUN 0 2 2005

JOHN F. CORCORAN, CLERK BY:

ROY M. TERRY, JR., et al,	) CASE NO. 3:04CV00065
Plaintiffs,	) )
v.	) <u>REPORT AND RECOMMENDATIONS</u>
WERNER SCHWANDT,	)
Defendant,	) By: B. WAUGH CRIGLER ) U.S. MAGISTRATE JUDGE

On May 25, 2005, the Receiver filed a motion for partial summary judgment on five issues of law identical to the Receiver's motion for partial summary judgment in the case of *Terry v. Virginia June, Guardian*, Case No. 3:03CV00052 (W.D.Va.). On April 19, 2005, the undersigned issued a Report and Recommendation in the *June* case recommending that the court deny the Receiver's motion for partial summary judgment without prejudice to renew after the close of discovery, which recommendation the presiding District Judge adopted. The discovery period in the present action closed on May 16, 2005. However, the parties jointly moved the court to extend the discovery cutoff to June 20, 2005, which motion the undersigned granted. Wherefore, for the same reasons set forth in the undersigned's Report and Recommendation in the *June* case, the undersigned hereby

## RECOMMENDS

that the presiding Judge DENY the Receiver's May 25, 2005 motion for partial summary judgment as premature but without prejudice to renew at the close of discovery.

The Clerk is directed to immediately transmit the record in this case to the Hon. James H. Michael, Jr., Senior United States District Judge. Both sides are reminded that pursuant to Rule 72(b) they are entitled to note objections, if any they may have, to this Report and Recommendation within (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(l)(C) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by any reviewing court as a waiver of such objection.

The Clerk is directed to send a certified copy of this Report and Recommendation to all counsel of record.

ENTERED:

U. S. Magistrate Judge

6-2-05